

65- INDEPENDENT AGENCIES - REGULATORY

407 - PUBLIC UTILITIES COMMISSION

CHAPTER 296 - SELECTION OF PRIMARY INTEREXCHANGE AND
LOCAL EXCHANGE CARRIERS

SUMMARY - This rule prohibits telecommunications carriers from changing a customer's preferred telecommunications carrier without first receiving the customer's authorization and allows customers to "freeze" their preferred carrier selections. The rule establishes requirements for soliciting, imposing, and lifting preferred carrier freezes and establishes penalty procedures for violations.

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§1 GENERAL PROVISIONS AND DEFINITIONS

A. Scope of Rule

This Chapter applies to local exchange carriers, interexchange carriers, and resellers of both local exchange and interexchange telephone service in Maine.

B. Definitions

1. Authorized Carrier. An “authorized carrier” is: 1) any telecommunications carrier that submits a change, on behalf of a customer, in the customer’s selection of a provider of telecommunications service with the customer’s authorization verified in accordance with the procedures specified in this rule; or 2) any telecommunications carrier to which a customer has presubscribed for telecommunications service (e.g. local exchange, intrastate toll, interstate toll, or international toll service).

2. Customer. A “customer” is any person who has agreed to receive, been accepted and is receiving telecommunication service or has agreed to be billed for the same, including that person’s spouse or legal guardian. For businesses, “customer” also includes a person designated as the contact person for telecommunications services or an officer or owner of the business.

3. Executing Carrier. An “executing carrier” is any telecommunications carrier that performs the physical operations needed to accomplish a request that a customer’s telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unnecessary delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

4. Letter of Agency (LOA) A “letter of agency” is a document containing a customer’s signature that authorizes a change to a customer’s preferred carrier selection.

5. Initiation of a Change of Carrier The "initiation of a change of carrier" is defined in the definitions "executing carrier" and "submitting carrier" of this rule.

6. Non-executing Carrier A "non-executing carrier" is an executing carrier that is providing a telecommunications service (either directly or indirectly through an affiliate) that is the subject of an authorized change who fails to execute that authorized change.

7. Preferred Carrier A “preferred carrier” is a carrier to which a customer has presubscribed for local, intrastate, interstate, or international telecommunications service.

8. Preferred Carrier Freeze A preferred carrier freeze is the process by which a customer's selection of a preferred telecommunications carrier cannot be changed without the customer's express authorization, as prescribed in this rule.

9. Submitting Carrier. A "submitting carrier" is a telecommunications carrier that: 1) requests on behalf of a customer that the customer's telecommunications carrier be changed; and 2) seeks to provide retail services to the end user customer. A carrier may be treated as a submitting carrier, however, if it is responsible for any unnecessary delays in the submission of carrier changes or for the submission of unauthorized carrier changes, including fraudulent authorizations.

10. Unauthorized Carrier. An "unauthorized carrier" is any telecommunications carrier that submits a change, on behalf of a customer, in the customer's selection of a provider of telecommunications service but fails to obtain the customer's authorization verified in accordance with the verification procedures specified in this rule.

11. Unauthorized Change. An "unauthorized change" is a change in a customer's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this rule.

§ 2 SOLICITING, IMPOSING, AND LIFTING PREFERRED CARRIER FREEZES

A. Preferred Carrier Freezes on Customer Request

Telecommunications carriers that offer preferred carrier freezes shall offer freezes on a non-discriminatory basis to all customers, regardless of the customer's carrier selections, upon request by a customer.

B. Freezes for Individual Telecommunication Services

A telecommunications carrier that offers freezes for more than one type of service (i.e. local exchange, intrastate toll, interstate toll, and international toll) must provide and obtain separate authorization for each type of freeze separately; telecommunications carriers may not bundle freezes for multiple services. Telecommunications carriers offering preferred carrier freezes must inform customers of this requirement when customers make inquiries regarding preferred carrier freezes.

C. Solicitation of Preferred Carrier Freezes

All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

1. An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;
2. A description of the specific procedures necessary to lift a preferred carrier freeze;
3. An explanation that the customer will be unable to make a carrier change unless he or she lifts the freeze; and
4. An explanation of any charges associated with the preferred carrier freeze.

D. Imposition of a Preferred Carrier Freeze

No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

1. Written Authorization. The local exchange carrier has obtained the subscriber's written authorization in a form that meets the following requirements:
 - a. The written authorization shall comply with section 3(B)(1) of this Chapter concerning the form and content of letters of agency.
 - b. The written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:
 - i. the subscriber's billing name and address and the telephone number(s) to be covered by the carrier freeze;
 - ii. the decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). The authorization must contain separate statements regarding the particular selections to be frozen (i.e. for local exchange, intrastate toll, interstate/interstate toll service, and international toll);
 - iii. that the subscriber understands that he or she will be unable to make a change in carrier selection unless he or she lifts the preferred carrier freeze; and

iv. that the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

2. Electronic Authorization. The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed. The electronic authorization should confirm verification data (e.g. the subscriber's date of birth or social security number) and the information required in section 2(D)(1)(b). Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism, that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

3. Third Party Verification. An independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the verification data (e.g. the subscriber's date of birth or social security number) and the information required in section 2(D)(1)(b). The independent third party cannot be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; cannot have any financial incentive to confirm preferred carrier freezes for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent.

E. Verification of Customers' Request to Inactivate or Lift a Preferred Carrier Freeze

Prior to lifting a customer's preferred carrier freeze to effect a carrier change, the local exchange carrier must verify the customer's request to lift the freeze through one of the following methods:

1. Three Way Call. A three-way call with the new carrier and customer. When engaged in an oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth, or social security number) and the subscriber's intent to lift the freeze. The carrier administering the freeze shall not market its own services during three-way calls;

2. Customer Initiated Telephone Request. A telephonic request initiated by the customer. The carrier administering the freeze shall confirm appropriate verification data as described in section 2(E)(1); or

3. Written Request. A written and signed request submitted by the subscriber.

§ 3 CHANGING A PREFERRED CARRIER SELECTION

A. Authorization for Change

A submitting carrier may not submit a change in a customer's preferred telecommunications carrier without authorization from the customer pursuant to section 3(B) of this Chapter.

B. Verification for Carrier-Initiated Preferred Carrier Changes

A submitting carrier may not submit a change in a customer's preferred carrier selection unless the change is verified with a letter of agency, electronic authorization, third party verification, or any other verification method adopted by the FCC after the effective date of this rule.

1. Letter of Agency (LOA). If the submitting carrier obtains the customer's written authorization in the form of an LOA, the LOA must conform to this section.

a. Form. The LOA shall:

i. be a separate or easily separable document containing only the authorizing language consistent with this section, whose sole purpose is to authorize a preferred carrier change, and shall not include any advertising or promotional material, or inducements of any kind. The LOA must be signed and dated by the subscriber to the telephone line(s) that are the subject of the carrier change request;

ii. notwithstanding paragraph (i) of this section, the letter of agency may be combined a check that contains only the required letter of agency language described in this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable bold-faced type on the front of the check, a notice that the consumer is authorizing a preferred carrier change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

b. Content. The LOA must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that:

i. confirms the decision to change the preferred carrier from the current telecommunications carrier to the submitting telecommunications carrier;

ii. confirms the customer's billing name, address, and telephone number to be covered by the preferred carrier change;

iii. informs the customer that only one telecommunications carrier may be designated as the preferred carrier for interstate or intrastate service for any one telephone number;

iv. contains separate statements regarding preferred carrier choices for each service being changed (e.g. local exchange, intrastate toll, interstate toll, or international toll);

v. confirms that the customer designates the submitting carrier to act as the customer's agent for the preferred carrier change; and

vi. confirms that a charge may be assessed to the customer for the preferred carrier change.

c. Any carrier designated in an LOA as a preferred carrier must be the carrier directly setting the rates for the subscriber.

d. If any portion of an LOA is translated into another language, then all portions of the LOA must be translated into that language.

e. Every LOA must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the LOA.

2. Electronic Authorization. If the submitting carrier has obtained the customer's electronic authorization, the call must be placed from the telephone number(s) on which the preferred carrier is to be changed. The authorization shall include the information described in section 3(B)(1)(b) of this rule. Carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. A call to the number will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the preferred carrier change, including automatically recording the customer's automatic number identification (ANI). The recording must be maintained and stored by the submitting carrier for a minimum of two years.

3. Third Party Verification. If the submitting carrier uses a third party to verify preferred carrier changes, the third party must be qualified and independent, and must obtain the customer's oral authorization to submit the preferred carrier change that includes appropriate verification data (e.g. the customer's date of birth or social security number). This method of verification is valid only if:

a. the data are maintained and stored by the independent third party or the submitting carrier for a minimum of two years;

b. the independent third party informs the customer that he/she is authorizing a change in telecommunication carriers and provides the identity of the new telecommunications carrier;

- c. the independent third party is not owned, managed, controlled, or directed by the new carrier or the carrier's marketing agent;
- d. the independent third party has no financial incentive to confirm preferred carrier change orders for the new carrier or the carrier's marketing agent; and
- e. the independent third party operates in a location physically separate from the new telecommunications carrier or the new carrier's marketing agent.

C. Responsibility of Executing Carrier

An executing carrier shall not verify the submission of a change order for a preferred carrier change received from a submitting carrier. For an executing carrier, compliance with this section shall be defined as prompt execution, without unreasonable delay, of changes that have been submitted to the executing carrier by the submitting carrier.

D. Verification for Changing Multiple Telecommunications Services

Where a submitting carrier is selling more than one type of telecommunications service (e.g. local exchange, intrastate toll, interstate toll, international toll), that carrier must obtain separate authorization from the customer for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this section.

E. Verification Method for Customer-Initiated Requests for Preferred Carrier Changes

A new submitting carrier receiving a customer-initiated request for a preferred carrier change shall maintain a record of the request for a minimum of two years after the request was made as verification of the customer's authorization to change preferred carriers. If the request is made orally, the submitting carrier shall verify the request in accordance with one of the verification methods specified in section 3(B) of this rule. The submitting carrier shall make the record available to the customer, as well as the Commission, upon request.

§ 4 LIABILITY AND REIMBURSEMENT PROCEDURES FOR FAILURE TO EXECUTE AN AUTHORIZED CHANGE

An executing carrier that is providing the telecommunications service (either directly or through an affiliate) that is the subject of an authorized change who fails to properly execute that authorized change (non-executing carrier), shall be liable as provided below.

A. Carrier Liability

In addition to other penalties provided by law, the non-executing carrier shall be liable to the customer's authorized carrier (i.e., the carrier to whom the customer would have been switched had the authorized change been executed) for charges the authorized carrier would have assessed had the change been executed, as well as for any reasonable billing and collection expenses.

1. If a customer has already paid charges to the non-executing carrier, the non-executing carrier must:

- a. Remit all moneys collected from the customer to the authorized carrier;
- b. Execute the authorized change request; and
- c. Provide the authorized carrier with all billing information necessary to determine what the customer would have paid the authorized carrier had the authorized change been executed.

2. The authorized carrier must refund to the customer any amounts it has collected in excess of what it would have assessed had the authorized change been executed.

3. If a customer has not paid the non-executing carrier, the non-executing carrier must:

- a. Remit to the authorized carrier the charges the authorized carrier would have assessed the customer had the authorized change request been executed;
- b. Execute the change request;
- c. Provide the authorized carrier with all billing information necessary to determine what the customer would have paid the authorized carrier had the authorized change been executed, if such information is requested by the authorized carrier.

B. Customer Liability

1. Charges Incurred Within 30 Days Of the Date of Submission of the Authorized Change Request. Any customer whose preferred telecommunications carrier is not changed by a non-executing carrier is absolved of liability for charges imposed by the non-executing carrier for service provided within 30 days of the date of submission of the authorized change request if the customer has not already paid charges to the non-executing carrier. Upon being informed by a customer that an authorized change has not occurred, the non-executing carrier and the authorized carrier shall inform the customer of this 30-day absolution period.

2. Charges Incurred Beyond 30 Days Of Submission of Authorized Change Where the Customer Has Not Paid Charges to the Non-Executing Carrier. The authorized carrier may also absolve the customer of the entire bill if in the authorized carrier's judgment the revenue to be recovered from the customer is less than the cost of re-rating the charges. The authc

3. Customer Has Paid Charges to Non-Executing Carrier. If the customer has already paid charges to the non-executing carrier, and the authorized carrier recovers such charges as provided in section 4(A), the authorized carrier shall refund or credit to the customer any charges recovered from the non-executing carrier in excess of what the customer would have paid the authorized carrier for the same service had the authorized change occurred.

C. Disputes Regarding Submission of Authorized Change Requests.

1. A non-executing carrier may contest the existence of an authorized change request or the date of its submission by notifying the authorized carrier of its dispute within 30 days of its notification by the authorized carrier or the customer that the authorized change was not executed.

2. Within 30 days of receipt of notification of a dispute, the authorized carrier must provide proof of a properly authorized change request and the date such request was submitted to the non-executing carrier.

3. Upon receipt of proof from the authorized carrier of an authorized change request, the non-executing carrier must comply with this section.

§ 5 LIABILITY AND REIMBURSEMENT PROCEDURES FOR AN UNAUTHORIZED CHANGE

A. Carrier Liability

In addition to other penalties provided by law, a submitting telecommunications carrier who initiates an unauthorized change shall be liable to the customer's authorized carrier in an amount equal to charges paid to the unauthorized telecommunications carrier by such customer after such violation, as well as for additional amounts as prescribed in this section. The unauthorized carrier shall also be liable to the customer for any charge required to return the customer to his or her authorized carrier.

B. Customer Liability

1. Charges Incurred Within 30 Days Of Unauthorized Change Where the Customer Has Not Paid Charges to the Unauthorized Carrier. Any customer whose preferred telecommunications carrier is changed without authorization verified in accordance with section 3(B) is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change if the customer has not already paid charges to the authorized carrier. Upon being informed by a customer that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, and the executing carrier shall inform the customer of this 30-day absolution period.

2. Charges Incurred Beyond 30 Days Of Unauthorized Change Where the Customer Has Not Paid Charges to the Unauthorized Carrier. Any charges imposed by the unauthorized carrier on the customer after this 30-day period shall be paid by the customer to the authorized carrier at the rates the customer was paying to the authorized carrier at the time of the unauthorized change. Upon the customer's return to the authorized carrier, the customer shall forward to the authorized carrier a copy of any bill that contains charges imposed by the unauthorized carrier after the 30-day period of absolution. The authorized carrier may re-rate charges incurred subsequent to the 30-day absolution period to reflect its own rates and the customer shall be liable for paying such re-rated charges to the authorized carrier. The authorized carrier may also absolve the customer of the entire bill if in the authorized carrier's judgment the revenue to be recovered from the customer is less than the cost of re-rating the charges.

3. Customer Has Paid Charges to Unauthorized Carrier. If the customer has already paid charges to the unauthorized carrier, and the authorized carrier recovers such charges as provided in section 5(A), the authorized carrier shall refund or credit to the customer any charges recovered from the unauthorized carrier in excess of what the customer would have paid the authorized carrier for the same service had the unauthorized change not occurred, in accordance with the procedures set forth in this section.

C. Reimbursement Procedures

1. Customer has Paid Charges to the Unauthorized Carrier

Where a customer has paid charges to the unauthorized carrier, the authorized carrier (i.e. in this context the carrier to which the customer was presubscribed immediately prior to the allegedly unauthorized change) and the unauthorized carrier must follow the following procedures.

a. Verification Process. Upon receiving notification from the customer or a carrier that a customer has been subjected to an unauthorized change and that the customer has paid charges to an allegedly unauthorized carrier, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the customer's authorization to change carriers. Within ten days of receiving such a request, the allegedly unauthorized carrier shall forward to the authorized carrier proof of verification of the subscriber's authorization to change carriers or payment as described in section 5(C)(1)(b).

b. Payment by the Unauthorized Carrier to the Authorized Carrier. Alleged unauthorized carriers that do not forward proof of verification to an authorized carrier as described in section 5(C)(1)(a) shall provide to the authorized carrier the following:

i. an amount equal to all charges paid by the customer to the unauthorized carrier;

ii. an amount equal to any charge required to return the customer to his or her properly authorized carrier, if applicable; and

iii. copies of any telephone bill(s) issued from the unauthorized carrier to the customer.

c. Billing and Collection Expenses. If an authorized carrier incurs any billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

d. Authorized Carrier Notification. Where a customer notifies the unauthorized carrier, rather than the authorized carrier, of an unauthorized carrier change, the unauthorized carrier must immediately notify the authorized carrier. Where a customer notifies the LEC, rather than the authorized carrier, of an unauthorized carrier change, the LEC shall either notify the authorized carrier of the unauthorized change or refer the customer to the authorized carrier.

e. Customer Refunds or Credits. Upon receipt from the unauthorized carrier of the amount described in section 5(C)(1)(b), the authorized carrier shall provide a refund or credit to the customer for all charges paid in excess of what the authorized carrier would have charged the customer absent the unauthorized change.

f. Restoration of Premiums. Where possible, the authorized carrier must reinstate the customer in any premium program in which that customer was enrolled prior to the unauthorized change, if that customer's participation in the premium program was terminated because of the unauthorized change. The properly authorized carrier shall also provide or restore to the customer any premiums to which the customer would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this subsection regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the customer.

2. Customer has Not Paid Charges to the Unauthorized Carrier. Where a customer has not paid charges to the unauthorized carrier, the authorized carrier (i.e. in this context the carrier to which the customer was presubscribed immediately prior to the allegedly unauthorized change) and the unauthorized carrier must follow the following procedures.

a. Customer Absolved of Liability for Charges. The unauthorized carrier shall remove from the customer's bill all charges that were incurred for service provided during the first 30 days after the unauthorized change has occurred.

b. Dispute of Alleged Unauthorized Change. The unauthorized carrier may, within 30 days of the customer's return to the authorized carrier, submit to the authorized carrier a claim that the customer was not subjected to an unauthorized change along with a request for the amount of charges for which the customer was credited pursuant to section 5(C)(2)(a) and proof that the change to the customer's telecommunications carrier selection was made with authorization verified in accordance with the verification procedures specified in section 3(B) of this rule.

c. Investigation of Alleged Unauthorized Change. The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the customer and the carrier making the claim.

d. Decision. Within 60 days after the receipt of the claim and proof of verification, the authorized carrier shall issue a decision on the claim to the customer and the carrier making the claim.

i. If the authorized carrier decides that the customer was not subjected to an unauthorized change, the authorized carrier shall place on the customer's bill a charge equal to the amount of charges for which the customer was

previously credited pursuant to section 5(C)(2)(a). Upon receiving this amount, the authorized carrier shall forward this amount to the carrier making the claim.

ii. If the authorized carrier decides that the customer was subjected to an unauthorized change, the customer shall not be required to pay the charges for which he or she was previously absolved.

§ 6 CONSISTENCY WITH FEDERAL COMMUNICATIONS COMMISSION RULE

In the event that the Federal Communications Commission promulgates a rule that is inconsistent with any provision of this rule, the Maine Public Utilities Commission will review the FCC's rule and initiate a rulemaking to amend this rule if necessary. In the event that the FCC waives the liability portion of its rules for carriers that agree to participate in an industry-funded independent dispute resolution process, sections 4 and 5 of this Chapter will not apply to those carriers.

§ 7 PENALTY

The Commission may impose an administrative penalty against any person, corporation, or entity that violates this rule, applicable statute, or order adopted pursuant to this rule.

A. Method for Imposing Penalty

The Director of the Consumer Assistance Division will collect the necessary data and make a recommendation to the Commission regarding the severity of the violation, whether a penalty should or should not be assessed, and the amount of any penalty. In determining whether or not a penalty should be assessed, the intent of the violator may be considered. The Commission may impose the penalty only after giving the alleged violator the opportunity to respond to the Director of the CAD's recommendation.

B. Amount of Penalty

The penalty for a violation may be in an amount not to exceed \$5,000.00 for each day the violation continues, up to a maximum of \$40,000.00 for a first offense and a maximum of \$110,000.00 for subsequent offenses. The amount of the penalty must be based on:

1. the severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;
2. the history of previous violations; and
3. the amount necessary to deter future violations.

C. Repeat Violations

If the Commission finds that a carrier has repeatedly violated this rule, the Commission shall order the utility to take corrective action as necessary. In addition, the Commission, if consistent with the public interest, may suspend, restrict or revoke the registration or certificate of the carrier, so as to deny the carrier the right to provide service in the State.

D. Deposit of Penalties

Penalties collected by the Commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under 35-A M.R.S.A. § 117.

§ 8 WAIVER OR EXEMPTION

Upon request of any person subject to the provisions of this Chapter or upon its own motion, the Commission may, for good cause, waive any or all requirements of this Chapter that are not required by statute. The waiver may not be inconsistent with the purpose of this Chapter or Title 35-A. The Commission, the Director of Technical Analysis, the Director of Consumer Assistance, or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

BASIS STATEMENT: The factual and policy basis for this rule is set forth in the Commission's Statement of Factual and Policy Basis and Order Adopting Rule, Commission Docket No. 98-725 issued on September 7, 1999. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

AUTHORITY: 35-A M.R.S.A. § 7106.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on 09/9/99. It was filed with the Secretary of State on 09/10/99 and will be effective on 09/15/99.